

**[SOFTWARE AS A SERVICE] RESELLER AGREEMENT**

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**BETWEEN**

<b>SYNAQ (PTY) LIMITED</b>
<b>Registration number:</b> 1966/005897/07
<b>Physical Address:</b> Ballyoaks Office Park, Golden Oak House, 35 Ballyclare Drive, Johannesburg 2021  <b>Tel:</b> 011 262 3632  <b>Email:</b> hello@SYNAQ.com
(Hereinafter referred to as " <b>SYNAQ</b> ")

**AND**

<b>[ADD NAME]</b>
<b>Registration / ID number:</b> <b>[ADD]</b>
<b>Physical Address:</b> <b>[ADD]</b> <b>Tel:</b> <b>[ADD]</b> <b>Email:</b> <b>[ADD]</b>
(Hereinafter referred to as " <b>Reseller</b> ")

**RECITALS:**

- a) SYNAQ is the sole proprietor and owner of the services known as **"SYNAQ Email Cloud Services"** and all associated intellectual property.
- b) SYNAQ appoints the Reseller, on a strictly non-exclusive basis, to market, resell, and license such Services and related documentation in the Territory, subject to the terms of this Agreement.

**1. DEFINITIONS AND INTERPRETATIONS**

In this Agreement, unless otherwise specified, the following terms have these meanings:

- 1.1. **"Agreement"** means this document and all schedules or appendices agreed to between the parties and attached hereto from time to time.
- 1.2. **"Business day"** means a day other than a Saturday, Sunday, or a public holiday.
- 1.3. **"Client"** means a party introduced by the Reseller to the Services, which may include an End User.
- 1.4. **"Commission"** means the commission as per the SYNAQ Reseller Tier Terms and Conditions.
- 1.5. **"Referral Client"** means a client that has been referred to SYNAQ by the Reseller, and for whom the Client has concluded the Services Terms and Conditions directly with SYNAQ.
- 1.6. **"Commencement Date"** means the date of the contract.
- 1.7. **"Data Protection Provisions"** means the provisions under clause 0 and such policies as SYNAQ may, from time to time, make available to its Resellers.
- 1.8. **"Data Protection Laws"** means all applicable data protection and privacy legislation, regulations, rules, codes in force from time to time in the Territory, including but not limited to the GDPR, the e-Privacy Directive, and any National Data Protection Laws, regulations, and secondary legislation, as amended or updated from time to time.
- 1.9. **"Discount"** means the discount that the Reseller shall be entitled to as per the SYNAQ Reseller Tier Terms and Conditions (current rate) against the Price List.
- 1.10. **"End User"** means the natural person who utilised the Services after authorisation from the Reseller Client or as may be directly made available by the Reseller.
- 1.11. **"Exit Management Plan"**: means the plan that will apply during the execution of the Exit Management Services, see **Annexure C**.
- 1.12. **"Exit Management Services"** see **Annexure C**
- 1.13. **"GDPR"** means the General Data Protection Regulation (EU) 2016/679.
- 1.14. **"Initial Period"** means the term as per **Annexure A** (Schedule of particulars).

- 1.15. **"Intellectual property rights"** means all rights to patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade and business names, and any other similar protected rights in any country.
- 1.16. **"Licensee"** or **"End User"** means a person situated in the Territory or that will utilise the Services in the Territory and who is a party to a Reseller Client Agreement with the Reseller in respect of the Services.
- 1.17. **"National Data Protection Laws"** means the laws, regulations, and codes applicable in the agreed country/is (that form part of the Territory) from time to time, or that may apply to the Reseller when reselling the SYNAQ Services.
- 1.18. **"Pattern Data"** means non-personally identifiable information, data, and reports derived from or compiled through the Services, including but not limited to demographics data, mobility patterns, location data, and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Services. For greater certainty, Pattern Data is data that does not identify a specific customer or Authorised User or end user and is data that does not relate to a specific customer's business (including data relating to a specific customer's locations that received the Services).
- 1.19. **"Personal Data"** means any information relating to an identified or identifiable natural person as defined under the GDPR, or such national laws applicable in terms of data protection.
- 1.20. **"Price List"** means the recommended retail prices for the Services as made available to the Reseller from time to time by SYNAQ, as amended as per this Agreement from time to time.
- 1.21. **"Prime Rate"** means the repo rate as determined and published from time to time by the South African Reserve Bank or the European Central Bank benchmark interest rate, plus 5%, whichever is the highest rate.
- 1.22. **"Referral Reseller"** means a specific legal entity that refers prospective leads or customers to SYNAQ, which customers sign directly with SYNAQ for the use of the Services.
- 1.23. **"Reseller Client"** means a person who has a regular and contractual business relationship with the Reseller, more specifically, who has been invoiced during the past six (6) months at any given date, for the provision of the services by the Reseller.
- 1.24. **"Reseller Client Agreement"** means the agreement between the Reseller and the Client for purposes of the Services, in the form as SYNAQ may from time to time direct or approve in writing (with reference to the SYNAQ Services Terms and Conditions) and as the same may be amended from time to time.
- 1.25. **"Reseller Tier Terms and Conditions"** means the document that specifies the Commission or Discount, Support Services obligations, payment terms, marketing and training obligations, and other terms relevant to the various Reseller tier groups (**see Annexure B**).
- 1.26. **"Services"** means the SYNAQ services available for resale as presented on the SYNAQ website and agreed to between SYNAQ and the Reseller from time to time in writing.

- 1.27. **"Services Documentation"** means the operating manuals and other literature provided by SYNAQ to the Reseller from time to time for use by end-users in conjunction with the Services.
- 1.28. **"Service Levels"** means the service levels as per the SYNAQ Support Policy.
- 1.29. **"Software"** means the cloud-based software utilised to enable SYNAQ to provide the Services and make the same available to End-Users.
- 1.30. **"Source Materials"** means all logic, logic diagrams, flowcharts, orthographic representations, algorithms, routines, sub-routines, utilities, Pattern data, modules, file structures, coding sheets, coding, source codes listings, functional specifications, program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the Software in question without reference to any other person or documentation and whether in eye-readable or machine-readable form.
- 1.31. **"Support Services"** means the support services provided or to be provided by the Reseller in accordance with the Reseller Tier Terms and Conditions pursuant to each Reseller Client Agreement.
- 1.32. **"SYNAQ Support Policy"** means the standard support and maintenance services made available by SYNAQ to Clients and End Users (upon request) as amended from time to time, which shall apply subsequent to Reseller's Support Services obligations as per the Reseller Tier Terms and Conditions.
- 1.33. **"Temporary Access"** means the period as may be agreed to between SYNAQ and the Reseller from time to time with regard to access to the Services for demonstration purposes.
- 1.34. **"Territory"** means the territory as per Schedule 1, and/or any other territory communicated and agreed in writing between the parties from time to time.
- 1.35. **"Year"** means any calendar year of 12 months.
- 1.36. reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, or re-enacted.
- 1.37. words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 1.38. The headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.39. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 1.40. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

## 2. APPOINTMENT AND GRANT OF RIGHTS

2.1. **Appointment:** Subject to the terms and conditions of this Agreement, SYNAQ hereby appoints the Reseller, and the Reseller hereby agrees to act as the non-exclusive Reseller of SYNAQ Services to potential customers in the Territory.

2.2. **Sub-contracting:** The Reseller may appoint subcontractors to perform any of its obligations under this Agreement, provided that:

2.2.1. The Reseller remains fully liable for the acts and omissions of its subcontractors as if they were its own.

2.2.2. The Reseller ensures that any subcontractor complies with the terms of this Agreement, including confidentiality, data protection, and intellectual property and provisions.

2.2.3. The Reseller obtains the prior written consent of SYNAQ before appointing any subcontractor, such consent not to be unreasonably withheld.

2.2.4. The Reseller shall enter into a written agreement with each subcontractor that mirrors the obligations under this Agreement, including indemnity and liability terms.

2.2.5. The Reseller shall indemnify SYNAQ against any loss, damage, or expense arising from the acts or omissions of any subcontractor.

### 2.3. **Restrictions:**

2.3.1. The Reseller shall not, without SYNAQ's prior written consent, engage directly or indirectly in the distribution, manufacture, import, sale, or promotion of any goods or services in the Territory that are similar to, compete with, or perform the same or substantially similar functions as the Services, during the Term of this Agreement and for twelve (12) months thereafter. Any breach of this clause shall constitute a material breach entitling SYNAQ to terminate in accordance with clause 15.

2.3.2. The Reseller shall not, directly or indirectly, grant rights to the Services outside the Territory, or knowingly facilitate use of the Services outside the Territory, except where a Client with its principal place of business in the Territory requires use at sites outside the Territory. In such cases, the Reseller must obtain SYNAQ's prior written consent for each extension. Any unauthorised extension shall constitute a material breach entitling SYNAQ to terminate in accordance with clause 15.

2.3.3. The Reseller, its group companies, and subcontractors shall not develop or distribute any service substantially similar to the Services in functionality or appearance, during the Term

and for one (1) year thereafter. Any breach of this clause shall constitute a material breach entitling SYNAQ to terminate in accordance with clause 15. The Reseller shall not, or allow any third party, including but not limited to its sub-contractors, to:

2.3.4. Make or permit others to make copies of or reproduce any part of the Software (including demonstration Software) in any form without the prior written consent of SYNAQ.

2.3.5. Attempt to make any changes or modifications to any Software.

2.3.6. Decompile, disassemble, or otherwise reverse engineer any Software (or part thereof).

2.3.7. The Reseller, its subsidiaries or fellow group companies and sub-contractors shall be restrained from developing or distributing a similar service supplied by SYNAQ, whether in functionality, look and feel. This restraint will be enforceable for the duration of this Agreement and for a period of 1 (one) year after termination or expiry of this Agreement for whatever reason.

2.3.8. The Reseller acknowledges that each of the above restraints are reasonable as to the subject matter, area, and duration, and are given and agreed to by the Reseller in favour of SYNAQ and are required to protect the proprietary interests of SYNAQ.

### **3. LEGAL RELATIONSHIP**

3.1. This Agreement does not establish the Reseller as a partner or agent of SYNAQ. Neither party may undertake obligations on behalf of the other or expose the other to liability, except as expressly permitted.

3.2. The Reseller may use the title "AUTHORISED SYNAQ RESELLER" in accordance with SYNAQ's policies. Prior to using this title on any materials, the Reseller must submit proof prints and details to SYNAQ for written approval.

### **4. COMMENCEMENT DATE AND DURATION**

4.1. This Agreement begins on the Commencement Date and lasts for the Initial Period, unless terminated by either Party as outlined in this Agreement.

4.2. In the absence of early termination as per the (clause 0 below Or an advance 90 (ninety) days written notification, the Agreement shall automatically renew on a month-to-month basis.

4.3. The commencement and duration of Services utilised by Clients will be as specified in the Services Terms and Conditions.

## 5. CLIENT CONTRACTUAL ENGAGEMENT

The Reseller must require all Clients to agree to SYNAQ's current then Services terms and conditions (the "**Services Terms**") by either:

5.1. Referring the Client to SYNAQ (in its Proposal) and allowing the Client to conclude the Services Terms and Conditions directly with SYNAQ (acting as referral Reseller ("Referral Reseller")); or

5.2. Incorporate the Services Terms and Conditions into the Reseller's agreement with the Customer in a method approved in advance by SYNAQ and obtain the signature of a duly authorised representative of the Customer on such agreement ("Reseller Client Agreement").

5.3. The Reseller must inform Clients that each End User can access the Services only after accepting the SYNAQ End User Service Terms / Acceptable Use Policy.

5.4. The Reseller shall not negotiate on any aspects of the Services without prior written consent from SYNAQ, including penalty provisions or warranties.

5.5. Upon signing the Services Terms or Reseller Client Agreement, SYNAQ will provide necessary credentials for activating and utilising the Services.

5.6. The Reseller agrees to fulfil its obligations under each Reseller Client Agreement and assist SYNAQ in performing under the Services Terms.

5.7. If a client breaches the Services Terms or Reseller Client Agreement, the Reseller must make reasonable efforts to remedy the breach. If unsuccessful, and without prejudice to SYNAQ being entitled to suspend the Services to the Client, the Reseller must terminate the Reseller Client Agreement and recover or destroy any related documentation as permitted.

## 6. SUPPORT AND MAINTENANCE

6.1. The Reseller agrees to provide the Support Services to the Client as per this Agreement.

6.2. The Reseller must promptly notify SYNAQ of any errors or defects in the Services or related documentation, providing documented examples. SYNAQ will address these issues according to its Support Policy.

6.3. SYNAQ will make reasonable efforts to inform the Reseller in writing about any known bugs or defects and will strive to correct them according to its standard procedures.

6.4. SYNAQ will provide support and maintenance per the SYNAQ Support Policy; however, SYNAQ is not obligated to support Clients or End Users directly unless otherwise agreed in writing with the Reseller, and

any such direct support may incur additional charges at SYNAQ's then-current rates. The Reseller remains responsible for first- and second-line support unless otherwise agreed in writing.

6.5. Upon termination of this Agreement, SYNAQ will make best efforts to ensure continued maintenance and support for those Clients that are utilising the Services until the expiration of the Reseller Client Agreement, (as per clause 18, Breach and Termination).

## **7. RESELLER'S OBLIGATIONS.** The Reseller shall:

7.1. Use its best efforts to promote and extend the Services proactively throughout the Territory.

7.2. Promptly inform SYNAQ of any relevant facts or opinions it may be aware of that may impact the commercial exploitation of the Services, whether advantageous or disadvantageous.

7.3. Conduct its business in a manner that positively reflects on the Services and SYNAQ's reputation.

7.4. Avoid participation in any illegal, deceptive, misleading, or unethical practices, including disparagement of SYNAQ's Services.

7.5. Employ sufficient staff capable of competently demonstrating the Services to prospective Licensees.

7.6. Proactively promote the Services to Clients and manage sales leads effectively to close sales.

7.7. Provide SYNAQ with reports and information regarding orders and Clients as reasonably required by SYNAQ from time to time.

7.8. Make no promises, representations, warranties, or guarantees regarding the Services except as expressly authorised by SYNAQ in writing.

7.9. Use SYNAQ's trade names only in the registered or agreed style related to the distribution of the Services and not in connection with other products or services.

7.10. Not supply or recommend any computer equipment to Clients, except for those listed in SYNAQ's current recommended compatible hardware list.

7.11. Comply with Data Protection Provisions, which shall survive termination of this Agreement.

7.12. Permit SYNAQ and its authorised agents to enter the Reseller's premises at reasonable times to verify compliance with this Agreement, granting an irrevocable license for such access.

7.13. Provide first- and second-line technical and sales support to Clients as per **Annexure B**, unless otherwise agreed to in writing.



**8. SYNAQ'S OBLIGATIONS.** SYNAQ shall:

- 8.1. Provide training as specified in the Reseller Tier Terms and Conditions, with additional training available at standard charges.
- 8.2. Offer Support and Maintenance to the Reseller and Reseller Clients per the Reseller Tier Terms and Conditions or SYNAQ Support Policy.
- 8.3. At its discretion, provide marketing and sales resources related to the Services, which remain SYNAQ's intellectual property and must be returned upon termination.
- 8.4. Timely provision of updated Price Lists for Client engagements.
- 8.5. Notify the Reseller in advance of any changes to the Services or plans to discontinue licensing in the Territory.
- 8.6. Promptly supply necessary information and assistance for the Reseller to fulfil its obligations regarding any modified or enhanced Services.
- 8.7. Comply with Data Protection Provisions, which shall survive termination of this Agreement.
- 8.8. Provide the Reseller with access to the SYNAQ partner Portal.

**9. ELECTRONIC DELIVERY AND HOSTING, AND DATA CENTER FACILITIES**

- 9.1. **Electronic Delivery.** SYNAQ will electronically deliver Services to Clients/End Users upon receipt of a valid Purchase Order. Services are subject to the terms outlined in the Documentation, and/or such Services Terms, which govern usage of the Services. SYNAQ is not liable for any claims arising from breaches of the Services Terms by the Reseller or End Users.
- 9.2. SYNAQ will provide and maintain all servers, hardware, and third-party software necessary for hosting Services at its own cost, unless otherwise agreed in writing.
- 9.3. Notwithstanding 0 above SYNAQ is not obligated to acquire dedicated servers, hardware, or software for the Reseller or Clients. Requests for such resources will incur additional costs, which the Reseller or End Users will be responsible for.
- 9.4. **Hosting and Data Centre Facilities.** Hosting and data centre facilities will be managed by a third party at SYNAQ's discretion. Neither SYNAQ nor the Reseller is liable for any service interruptions or issues caused by this third-party service. The Reseller must promptly notify SYNAQ of any such incidents.

**10. CONSIDERATION AND PAYMENTS**

10.1. **Pricing** for Services is outlined in the SYNAQ Price List. Any deviations require prior written approval from SYNAQ, and the Reseller must maintain records of these approvals.

10.2. SYNAQ may provide recommended Service pricing for the Territory, but the Reseller can set its own Service fees and annual support charges, invoicing End Users directly.

10.3. The Reseller authorises SYNAQ to submit electronic invoices (secure) to Clients.

## **11. Reseller Fees (other than Referral Reseller):**

11.1. The applicable Reseller Discount shall be as published by SYNAQ from time to time based on tier grouping.

11.2. The Reseller agrees to pay SYNAQ a fee for each Reseller Client Agreement entered into by the Reseller, calculated as the Price List amount minus the Reseller Discount ("**Reseller Fee**").

11.3. The payment procedures for Reseller Fees are detailed in **Annexure B**.

## **12. Referral Reseller:**

12.1 The applicable Reseller Commission shall be as published by SYNAQ from time to time against the relevant Reseller tier grouping.

12.2. SYNAQ will pay the Commission to the Reseller as detailed in **Annexure B**.

12.3. Payment procedures for the Referral Reseller's Commission are outlined in **Annexure B**.

12.4. Enabling and Implementation Fee: SYNAQ will charge the necessary onboarding fees upon the Client's activation, specified in the proposal or provided prior to onboarding. The Reseller must include these fees in the Client quotation and Reseller Client Agreement.

12.5. Overage Fees. If the End User's actual Service usage exceeds the initial quantity ordered on the Purchase Order ("Overage"), the Reseller will be billed for any applicable overage charges monthly per any applicable SYNAQ terms or Documentation ("Overage Fees"). All undisputed Overage Fees must be paid by the Reseller within thirty (30) days of invoice receipt.

12.6. Exit Management Services ("EMS") fees: During the Exit Management Plan ("EMP"), the EMS fees as per SYNAQ's then-current EMS rates will apply. See [ADD URL] for current EMS fees. These fees will be in addition to any Reseller Fees where Services may continue during the EMP, Transfer Period.

The Reseller shall maintain accurate records and make them available to SYNAQ upon request for verification of payments due.

12.7. During this Agreement and for a period thereafter, SYNAQ may conduct an audit of the Reseller's records related to fee payments with five (5) business days' written notice. The Reseller must grant access to relevant records, and any identified shortfall must be paid within fourteen (14) days of written confirmation.

12.8. Suspension of orders: If the Reseller fails to make timely payments, SYNAQ may suspend the Reseller's ability to enter into further agreements until full payment is made.

12.9. Suspension of Access. If fees are thirty (30) days overdue, SYNAQ may suspend End User access to Services or the Reseller's access to all Services after providing written notice and allowing seven (7) business days for payment. The Reseller remains liable for all fees during suspension and indemnifies SYNAQ against any related claims.

12.10. All fees under this Agreement are exclusive of any relevant sales tax that SYNAQ is required to charge, for which the Reseller shall be additionally liable to pay to SYNAQ.

12.11. SYNAQ may increase contract prices due to uncontrollable factors (e.g., foreign exchange fluctuations) with written notification to the Reseller.

12.12. The Reseller Fees payable to SYNAQ are subject to an annual increase of a rate no more than 10% (ten percent), effective in July each year.

12.13. SYNAQ may charge interest on late payments at Prime Rate plus 2 (two) percent per month on overdue amounts, along with collection costs (including legal costs on an attorney and own client basis).

12.14. SYNAQ reserves the right to increase the prices it charges for the Services from time to time, upon at least thirty (30) days' written notification to the Reseller.

12.15. Client Cancellation or Change Process: notify SYNAQ in writing if there is any change to any Client order. No cancellation or amendment to any Client order shall be accepted if not confirmed in writing by the Reseller to SYNAQ, and SYNAQ has confirmed receipt of the written notification. SYNAQ will have no obligation to refund any Fees where notification has not been provided or notification has been provided late to SYNAQ.

### **13. INTELLECTUAL PROPERTY RIGHTS**

13.1. The Reseller shall not and allow any third party to use, copy, reverse-engineer, decompile, modify, or otherwise handle SYNAQ's intellectual property in any unauthorised manner, even after termination of this Agreement.

13.2. The Services, Services Documentation, Pattern Data and all intellectual property rights therein or

relating thereto and all enhancements or changes thereto are and shall remain the property of SYNAQ and all copies thereof in the Reseller's possession, custody or control shall (to the extent that they are not exhausted by proper use) be returned to SYNAQ or otherwise disposed of by the Reseller as SYNAQ may from time direct.

13.3. Material Breach. Any unauthorised use, copying, reverse-engineering, disclosure, or infringement of SYNAQ's Intellectual Property by the Reseller or its Affiliates, subcontractors, Clients, or End Users shall constitute a material breach entitling SYNAQ to terminate this Agreement in accordance with clause 18, Breach and Termination.

13.4. Territory-specific development ("Territory Development"): The Reseller agrees that any future enhancements and amendments to the SYNAQ Services that may be required as a result of territory-specific needs may only commence subject to:

13.4.1. prior written approval from SYNAQ,

13.4.2. development work to be executed by SYNAQ or its nominee only, unless otherwise agreed to in writing; and

13.4.3. All Territory Development shall form part of the SYNAQ Services, available to be utilised by other Resellers and/or Clients.

13.4.4. All Territory Development shall be owned by SYNAQ

13.5. Services to be identified as SYNAQ's. The Reseller agrees that when discharging its obligations hereunder to identify the SYNAQ Services as being the proprietary property of SYNAQ. The Reseller agrees not to remove any copyright notices or confidential or proprietary legends or identification from the SYNAQ Services or Documentation.

#### **14. SYNAQ trademarks.**

14.1. SYNAQ hereby grants Reseller a non-exclusive, non-transferable, royalty-free, revocable, and limited right to use and display applicable SYNAQ trademarks solely in connection with and solely to the extent reasonably necessary to identify the Reseller as a Reseller of SYNAQ and to enable the Reseller to market and promote the SYNAQ Services to Clients and implement and support the SYNAQ Services in the Territory in accordance with the terms and conditions of this Agreement.

14.2. The use of the SYNAQ Trademark shall be in accordance with the SYNAQ Brand Guide outlined in **Annexure D**.

14.3. The Reseller shall not alter, obscure, remove, or interfere with any trademarks or markings of SYNAQ or associated with the Services provided by SYNAQ.

14.4. Subject to this limited right of use, the Reseller has no right, title, or interest in the trademarks and trade names of SYNAQ or any of its Affiliates. The limited right granted in terms of this clause 0 will expire on the termination and/or expiration of this agreement.

14.5. Documentation. SYNAQ hereby grants the Reseller a non-exclusive, non-transferable, royalty-free, and revocable right to use the Documentation. The Reseller shall submit to SYNAQ, upon request, samples of its use of the Documentation, if the Reseller incorporates any of such Documentation into the Reseller's promotional materials. The Reseller shall cease using the Documentation upon the termination of this Agreement for any reason whatsoever. All rights not expressly granted are reserved to SYNAQ.

14.6. Restriction. Nothing done pursuant to this Agreement shall transfer to the Reseller title or any other rights not expressly granted hereunder to any of the Intellectual Property Rights.

14.7. Safeguarding the SYNAQ Intellectual Property. the Reseller shall use its best endeavours to safeguard the Intellectual Property Rights of SYNAQ and to report promptly to SYNAQ any third-party claim relating to the Intellectual Property Rights after such claim comes to the attention of the Reseller, directly or indirectly. the Reseller shall co-operate with SYNAQ in any enforcement or other protective action taken by SYNAQ and report to SYNAQ any breaches or suspected breaches of the Reseller Customer Agreement by the Reseller Customer or the EULA by the Authorised Users which could adversely affect SYNAQ's Intellectual Property Rights.

14.8. The Reseller must immediately notify SYNAQ of any unauthorised use of the Services or related intellectual property and assist SYNAQ (at its expense) in defending its rights.

14.9. The Reseller shall not use, reproduce, or deal in the Services except as expressly permitted by this Agreement.

14.10. The provisions of this Section shall survive the termination of this Agreement.

## **15. CONFIDENTIALITY**

15.1. Each party acknowledges that the Confidential Information of each party is valuable, proprietary information. For purposes of this Agreement, "Confidential Information" means any information disclosed by either the Reseller to SYNAQ or SYNAQ to the Reseller concerning the discloser's business and/or affairs, including but not limited to information relating to a its operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents, Personal Data, data and information which, when provided to the Reseller or to SYNAQ, as the case may be: (a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; (b) are disclosed orally or visually, identified as

Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 (ten) days; or (c) a reasonable person would understand to be confidential or proprietary at the time of disclosure.

15.2. All Confidential Information supplied by one party to the other party pursuant to this Agreement, together with all copies thereof, will remain the property of the disclosing party. During the Term and after termination or expiration of the Agreement for any reason whatsoever, each party shall keep the other Party's Confidential Information confidential, not disclose any Confidential Information to third parties, and not use the other party's Confidential Information for any purpose other than the performance of its obligations under the Agreement.

15.3. The obligations of confidentiality shall not apply to information which (a) was publicly available at the time of the disclosure to the receiving party, (b) subsequently becomes publicly available through no fault of the receiving party, (c) is rightfully acquired by the receiving party from a third party and not in breach of a confidential obligation with regard to such information, (d) is independently known by the receiving party whether prior to or during the Term of the Agreement, (e) is required to be disclosed due to an order by a court, government, administrative, fiscal or judicial body that is acting within its powers, but only to the extent required to comply with the applicable order and provided that the receiving party will cooperate with the other party in the exercise of its right to protect the confidentiality of the Confidential Information, or (f) is disclosed with the written consent of the respective other party.

15.4. This clause 15 shall survive the termination of this Agreement for any reason whatsoever for a period of at least five (5) years and shall continue to apply indefinitely in respect of trade secrets and Personal Data.

15.5. Material Breach. Any unauthorised use or disclosure of Confidential Information, including Personal Data or trade secrets, by the Reseller or its Affiliates, subcontractors, Clients, or End Users shall constitute a material breach entitling SYNAQ to terminate this Agreement in accordance with clause 18, Breach and Termination.

## **16. RESERVATION OF RIGHTS.** SYNAQ reserves the right:

16.1. to modify, enhance, replace, or make additions to the Services in any way whatsoever as SYNAQ may, in its discretion, determine.

16.2. to discontinue licensing or sub-licensing the Services in the Territory (whereupon this Agreement shall automatically terminate), subject to 180 (one hundred and eighty) days' prior written notification to the Reseller; and

16.3. to require the Reseller either not to use or to cease to use any advertising or promotional materials in respect of the Services which SYNAQ considers not to be in SYNAQ's best interest.

16.4. to withdraw any of the Services or part of the Services, subject to reasonable advance notification of said withdrawal of Services.

## **17. SYNAQ SURVEY RIGHTS AND PERFORMANCE REVIEW**

17.1. SYNAQ shall have the right to conduct surveys and assessments at the Reseller and at the Clients to evaluate the quality of services provided by the Reseller.

17.2. Such surveys shall be reviewed quarterly. If the feedback from Clients indicates that the Reseller's services are below agreed standards or industry best practices, the Reseller shall be issued a written notice to rectify the deficiencies within one (1) month from the date of notice.

17.3. Should the issue not be rectified within the 1 one) month or should the same issue recur within the following two (2) consecutive quarters again, or if there is a substantial increase in negative feedback, SYNAQ shall have the right to terminate this Agreement with immediate effect and engage directly with the affected Clients.

## **18. BREACH AND TERMINATION**

**18.1. Termination by SYNAQ.** SYNAQ may terminate this Agreement immediately upon written notice if:

18.1.1 the Reseller ceases, or threatens to cease, business related to the Services;

18.1.2. there is a change of control of the Reseller (more than 50% ownership change, other than a public listing);

18.1.3. The Reseller or its Affiliates acquire, own, or distribute any software or services that compete with the Services;

18.1.4 The Reseller's acts or omissions materially damage SYNAQ's goodwill in the Territory;

18.1.5. the Reseller breaches any of clauses 2 (Appointment), 13 (Intellectual Property Rights), or 15 (Confidentiality); or

18.1.6. The Reseller fails to meet the Survey Levels in two (2) consecutive quarters.

**18.2. Termination by Either Party.** Either Party may terminate this Agreement immediately upon written notice if:

18.2.1. The other Party commits a material or persistent breach (other than breaches of clauses 2.3, 11, or 12, which are deemed irremediable) and fails to remedy within twenty-one (21) days of written notice;

18.2.2. The other Party is unable to perform its obligations for fifteen (15) consecutive days or thirty (30) days in any twelve months;

18.2.3. a receiver, liquidator, judicial manager, or business rescue practitioner is appointed, or a winding-up resolution is passed;

18.2.4. the other Party commits an act of insolvency under the Insolvency Act, 1936; or

18.2.5. The other Party fails to satisfy a final judgment within twenty-one (21) days of becoming aware of it.

**18.3. Effect of Termination:** Termination under this clause is without prejudice to any rights or remedies accrued at the date of termination. The non-defaulting Party may claim damages for any loss occasioned by termination in addition to any other rights under this Agreement or at law.

**18.4. Client Orders:** Termination of individual Client orders shall require sixty (60) days' written notice to SYNAQ, acknowledgement by SYNAQ, and shall not occur during the Client's Initial Period. Early termination charges may apply where SYNAQ has obligations to third-party service providers. Data migration will be governed by the Exit Management Plan (Annexure C) and EMS fees.

**18.5. Voluntary Termination of Client Orders:** Termination of any Client order shall be subject to written notification ("Notification") to SYNAQ, subject to the following:

18.5.1. Notification must be at least sixty (60) days in advance.

18.5.2. Notification must be submitted to SYNAQ, and SYNAQ must acknowledge receipt.

18.5.3. Termination shall not occur during the Client's Initial Period. Early termination/cancellation charges may apply where SYNAQ has obligations to third-party service providers.

18.5.4. Migration of data shall be dealt with under the Exit Management Plan (EMP) and subject to SYNAQ's EMS fees on a Client level.

## **19. EFFECT OF TERMINATION.** Upon termination of this Agreement:

19.1 All rights and obligations of the Parties under this Agreement shall automatically terminate, except for:

19.1.1. Rights of action accrued before termination and obligations intended to continue post-termination (including but not limited to the EMS and Services during the Transfer Period.

19.1.2. Terms necessary for the Reseller to fulfil ongoing obligations under existing Reseller Client Agreements, excluding cases where Clients have concluded Services Terms directly with SYNAQ;

19.2. Clause 18 shall not apply where the Clients have concluded the Services Terms directly with SYNAQ.



19.3. In the event of:

19.3.1. The termination of this Agreement by the Reseller as the aggrieved party in terms of the clause 0 and SYNAQ is not the defaulting party contemplated in the clause 0; or

19.3.2. the expiry of this Agreement by the passing of time; or

19.4. The termination, cancellation, or expiry of any of the Services, The Parties undertake to comply with the Exit Management Plan set out in **Annexure C**.

19.5. In the event of:

19.5.1. The termination of this Agreement by SYNAQ as the aggrieved party in terms of the clause 18 or

19.5.2. SYNAQ being the Defaulting Party contemplated in clauses 0 to 0 above

the following shall apply:

19.5.2.1. The provision of all Services shall forthwith cease.

19.5.2.2. SYNAQ shall deliver to the Reseller all of the Reseller's Confidential Information and Agreement Materials in the possession of SYNAQ and, at the Reseller's request, destroy all copies thereof not delivered to the Client, no later than 10 (ten) days after such termination. Actual costs incurred in such delivery and/or destruction shall be for the Reseller's account.

19.5.2.3. The Reseller shall deliver to SYNAQ all of SYNAQ's Confidential Information and documentation in the possession of the Reseller and, at SYNAQ's request, destroy all copies thereof not delivered to SYNAQ, no later than 10 (ten) days after such termination. Actual costs incurred in such delivery and/or destruction shall be for SYNAQ's account and

19.5.2.4. In addition to the payment of any other Fees set out in this Agreement, the Client shall be liable to pay to SYNAQ all Fees due to SYNAQ for Services already provided and/or Services rendered before termination, even if they have not yet been invoiced.

19.6. The Reseller must further:

19.6.1. Immediately remove all references to "AUTHORISED SERVICES/SYNAQ RESELLER" from literature and advertisements.

19.6.2. Subject to the EMP (where applicable), have its access and its authorised representatives' access to the Services deactivated by SYNAQ.

19.6.3. Settle any outstanding amounts immediately with SYNAQ.

19.6.4. Subject to the EMP (where applicable), Erase the Services from all its computers and provide certification of this to SYNAQ.

19.7. Subject to clause 0 below, each Reseller Client Agreement then subsisting shall continue in effect and shall survive the termination of this Agreement. SYNAQ shall continue to provide the Services to those Clients as per the Reseller Client Agreement and the Reseller shall be entitled to such consideration on those Reseller Client Agreements until expiration of said Reseller Client Agreement and subject to receipt of payment from the Reseller (in terms of Discount rights), unless the breach under this Agreement is a result of an action and or omission of the Reseller, where the Reseller shall not be entitled to any remuneration after the termination of this Agreement. It is specifically agreed that the Reseller shall not be entitled to remuneration on any Referral Client after the termination date.

19.8. The Clients may select either to transition off the Services or to assign the Reseller Client Agreement to SYNAQ or its nominee. The following will apply:

19.8.1. Where Client selects to continue utilisation of SYNAQ Services: -

19.8.1.1. The Reseller shall make available all Client details required by SYNAQ to enable SYNAQ to continue its Services directly to the Client.

19.8.1.2. The Reseller agrees that SYNAQ may engage directly with the Client to assist with the transfer and assignment of the Client from the Reseller to SYNAQ.

19.8.1.3. The Reseller agrees to indemnify SYNAQ against all claims (for damages, losses, or costs) that the Client may have against the Reseller before such assignment and transfer.

19.8.1.4. Where the Client selects to transition off the Services, the EMP shall apply.

19.9. During the EMP, no new orders or renewals may occur.

**20. Termination Assistance.** The Reseller must notify Clients at least thirty (30) days before termination, assisting them in transitioning services to ensure continuity. Any notification to be sent to the Clients by the Reseller shall be subject to the necessary consultation with SYNAQ to ensure continuity. Additional services requested by Clients or the Reseller will be quoted by SYNAQ.

**21. Data migration.** If data migration becomes necessary due to termination of this Agreement arising from any act or omission by the Reseller, and where the Client selects to move to another service provider, the Reseller shall bear all costs associated with such data migration together with a reasonable administration fee, both charged at SYNAQ's prevailing EMS rates at the time of migration.

21.1. If either Party continues to perform any of its obligations as per this clause 21 such continuance shall not constitute a waiver of any rights or remedies available to such Party in terms of said breach and clause 19 (Effect of Termination)

**22. INDEMNITIES.** SYNAQ shall indemnify the Reseller and End Users solely against claims that the normal and authorised use of the Services infringes third-party intellectual property rights, provided that:

22.1. The Reseller does not prejudice SYNAQ's defence.

22.2. The Reseller provides reasonable assistance.

22.3. The claim does not arise from unauthorised use of the Services or unapproved equipment.

22.4. In no event shall SYNAQ, its employees, agents and sub-contractors be liable to the Reseller to the extent that the alleged infringement is based on (i) a modification of the SYNAQ Services by anyone other than SYNAQ; or ii) the Reseller's or the Clients use the SYNAQ Services in a manner contrary to the instructions given to the Reseller and the Clients by SYNAQ; or iii) the Reseller or the Clients use of the SYNAQ Services after notice of the alleged or actual infringement from SYNAQ or any appropriate authority.

22.5. The foregoing states the Indemnitees' sole and exclusive rights and remedies, and SYNAQ (including its directors', employees', agents', and sub-contractors') entire obligations and liability, for infringement of any intellectual property rights.

22.6. SYNAQ may replace or modify the Services or Service Documentation to avoid infringement. This indemnity constitutes SYNAQ's sole liability for such claims.

**23. Data Processing indemnification:** The Parties indemnify each other, along with their affiliates and staff, against any claims, actions, liabilities, losses, damages, and expenses (including legal fees) arising from third-party claims or government actions related to data processing under this Agreement, provided that:

23.1. Reseller shall indemnify and hold harmless SYNAQ, its affiliates, directors, officers, employees, agents, and subcontractors against any claims, actions, liabilities, losses, damages, and expenses (including reasonable legal fees) arising from or related to:

- (a) any misuse, mishandling, or unlawful processing of Client or End User Personal Data by the Reseller, its Clients, End Users, or subcontractors; or
- (b) any breach by the Reseller of applicable Data Protection Laws or this Agreement.

23.2. SYNAQ shall indemnify and hold harmless the Reseller, its affiliates, directors, officers, employees, agents, and subcontractors against any claims, actions, liabilities, losses, damages, and expenses (including reasonable legal fees) arising directly from SYNAQ's own unauthorised disclosure, misuse, or unlawful processing of Personal Data, to the extent caused by SYNAQ's acts or omissions, provided that SYNAQ's liability under this clause shall in all cases be subject to the limitation of liability set out in clause 26.

23.3. Each Party's obligations under this clause are subject to the conditions that: (a) The Indemnifying Party is given immediate and complete control of the claim; (b) the Indemnified Party does not prejudice the Indemnifying Party's defence; and (c) The Indemnified Party provides reasonable assistance.

23.4. If a claim is made against SYNAQ for which indemnification is sought, SYNAQ shall consult with the Reseller and cooperate with any reasonable requests from the Reseller regarding the claim, subject to reasonable security measures.

## **24. WARRANTIES**

**24.1. General:** Each Party represents and warrants that it: -

24.1.1. The execution and performance of this Agreement have been duly authorised by the requisite corporate action on the part of such Party.

24.1.2. Has the legal capacity and power to enter into and perform and has taken all necessary action to authorise the entry into and performance of the transactions (including but not limited to having the necessary licenses, permits, consents, and authorisations) contemplated by this Agreement.

24.1.3. The execution and performance do not conflict with any applicable laws or regulations applicable to the Party.

24.1.4. All information provided is true and accurate in all material respects.

24.1.5. No information has been given or withheld by it which, if disclosed, might result in the information supplied being untrue or misleading in any material respect.

**25. No Representations.** The Reseller may not make any warranties or representations on behalf of SYNAQ beyond those explicitly provided in this Agreement or the Customer Agreement. The Reseller must ensure that neither it nor its agents makes any unauthorised claims and must disclaim all other warranties, express or implied, except those permitted by this Agreement.

25.1. The Reseller acknowledges that the success of its business by reselling the Services in terms of this Agreement depends largely upon its own business ability. The Reseller acknowledges that SYNAQ has made no warranty, express or implied, as to the potential success of the Services to be introduced to the Reseller's customers. The express terms of this Agreement are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, law, custom, trade usage, course of dealing or otherwise, all of which are hereby fully excluded permitted by law.

## **26. LIMITATION OF LIABILITY**

26.1. A Party's total aggregate liability for any proven direct loss or damage arising out of or in connection with this Agreement shall not exceed the total fees actually paid by the Reseller to SYNAQ in the twelve (12) months immediately preceding the event giving rise to the claim.

26.2. Notwithstanding anything else contained in this Agreement, but subject to clause 26 Neither party shall be liable for loss of profits, business, or anticipated savings, or for any indirect, special, or consequential loss or damage whatsoever, even if a party has been advised of the possibility thereof, and whether arising from negligence, breach of contract, or otherwise.

26.3. A Party does not exclude liability for:

26.3.1. death or personal injury caused by a Party's negligence.

26.3.2. gross negligence or wilful misconduct.

26.3.3. fraud or misrepresentation.

26.3.4. Breach of any Data Protection Provisions.

26.3.5. Infringement of a party's intellectual property rights.

**27. NON-SOLICITATION.** Except as otherwise agreed by SYNAQ in writing, during the term of this Agreement and for a period of twelve (12) months following the date of any contract hereunder, the Reseller hereby agrees not to solicit, induce or hire any employee or contractor of SYNAQ involved in the marketing, promotion, sale or distribution of cloud services to the Reseller to leave their employment or terminate or breach their contract for services with SYNAQ, as the case may be. Notwithstanding the foregoing, solicitation of either party's current employees or independent contractors who are not involved in the performance of this Agreement by means of a general media solicitation or trade publication, or advertisement shall not constitute a breach of this provision.

**28. COMPLIANCE WITH LAWS.** In connection with this Agreement and the delivery of SYNAQ Services hereunder, both Parties shall comply with any applicable laws, rules, regulations, and codes, both domestic and foreign, including, but not limited to, any applicable import, re-import, export, and re-export laws and regulations and economic sanctions programs implemented by the relevant authority. The Reseller is solely responsible for compliance related to the manner in which the Reseller and/or End User chooses to use the SYNAQ Services, including, without limitation, any transfer and processing of End User content, the provision of the End User content to third parties, and the region in which any of the foregoing occurs.

**29. Anti-Bribery.**

29.1. The Reseller (including its officers, directors, employees, agents, and any person under its control) shall comply with, and shall require its contractors, subcontractors, and any contingent workers to comply with, any and all applicable anti-corruption laws and regulations, applicable in the Republic of South Africa and the Territory. Without limiting the foregoing, the Reseller (including its officers, directors, employees, agents and any person under its control) shall not, directly or indirectly, make, promise to make, or accept any payment (other than for the SYNAQ Services fee), offer or transfer of anything of value in connection with this Agreement or any other business transaction, to:

29.1.1. anyone working in an official capacity for a government, government entity (including employees of government-owned or controlled corporations), or public international organisation.

29.1.2. any political party, party official, or candidate for political office.

29.1.3. an intermediary for payment to any of the foregoing.

29.1.4. any officer, director, employee of any actual or potential End Users.

29.1.5. any officer, director, employee of any commercial company.

29.1.6. any officer, director, or employee of either party or any of its affiliates; or

29.1.7. any other person or entity if such payment, offer, or transfer would violate the laws of the country in which made.

29.2. It is the intent of the parties hereto that no payments, offers, or transfers of value shall be made or received which have the purpose or effect of public or commercial bribery, acceptance or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining or retaining business or directing business to any person or entity. In addition, each party warrants to the other that none of its officers, directors, employees, agents, or representatives is an official or employee of the government of the Territory or of any department or instrumentality of such government, nor is any of them an officer of a political party or candidate for political office who will share, directly or indirectly, any part of the sums due hereunder.

### **30. DATA PROTECTION AND PRIVACY**

30.1. Each Party agrees to comply with all applicable data protection and privacy laws, including the Protection of Personal Information Act, 2013 ("POPIA"), the General Data Protection Regulation (EU) 2016/679 ("GDPR"), the UK GDPR, and any other applicable data protection laws (collectively, "Data Protection Laws") when engaging with each other and with Clients.

30.2. Without prejudice to any rights and obligations under the Data Protection Laws, the Parties agree they will (but not limited to the following):

30.2.1. to implement reasonable measures to prevent unauthorised access to or loss of Personal Data. Such measures shall include appropriate technical and organisational safeguards, as required by the applicable Data Protection Laws, to ensure a level of security appropriate to the risk.

30.2.2. Treat all Personal Data processed under this Agreement as confidential. Personal Data shall only be processed on documented instructions from the other party, unless required to do so by law.

30.2.3. Ensure that any person acting under their authority who has access to Personal Data is subject to a duty of confidentiality.

30.2.4. Promptly notify the other party in writing of any actual or suspected personal data breach, as required under Article 33 of the GDPR (or such relevant Data Protection Laws), and provide reasonable assistance in meeting any reporting obligations to supervisory authorities and affected data subjects.

30.3. If changes to Data Protection Laws affect this Agreement, both parties will seek a legally effective amendment. The parties shall work together in good faith to implement such changes as are necessary to ensure ongoing compliance with all applicable Data Protection Laws.

30.4. The Relationship between the Reseller, the Client, and SYNAQ in terms of processing Personal Data:

30.4.1. SYNAQ shall act as Controller when Processing the Reseller's own Personal Data to activate the Services for the Reseller's own administrator and Processing of the Reseller's Personal Data when managing the Reseller relationship, however.

30.4.2. SYNAQ shall act as:

30.4.2.1. In terms of a Referral set up (see clause 12): Processor during the Clients/End Users' use of the Services and Process Personal Data as per lawful instructions from the Client/End User, who shall act as Controller. The Client is solely responsible for assessing the admissibility of the data Processing and for safeguarding the rights of the data subjects.

30.4.2.2. In terms of a Reseller Client Agreement set up (see clause 0): Sub-Processor and the Reseller as Processor and the Client as Controller.

30.5. Where SYNAQ acts as a Processor or sub-processor, it shall only process Personal Data on instructions from the Client End user, unless required to do so by law, in which case SYNAQ shall inform the Client/End User of that legal requirement before processing, unless prohibited by law.

30.6. Personal Data may be transferred or stored outside the country where the Reseller, Client (or End users) are to carry out the Services. SYNAQ agrees that where the performances of Services involves a transfer of Personal Data outside the country of the Reseller or Client, additional requirements are to be over and above the requirements described under this Agreement, unless the country where SYNAQ or its service provider(s) is located is a country to have a similar or adequate level of protection of Personal Data under the relevant Data Protection Laws. Where such transfers involve personal data originating from the European Economic

Area (EEA), Switzerland, or the United Kingdom, SYNAQ shall ensure that such transfers (if any) are made in compliance with Chapter V of the GDPR, including the use of appropriate safeguards such as Standard Contractual Clauses, Binding Corporate Rules, or adequacy decisions.

30.7. SYNAQ may process and disclose Personal Data to its affiliates or third-party providers anywhere in the world for administration purposes; to manage the relationship of the parties and execution of the Services, and the Reseller must inform its clients/End Users accordingly. SYNAQ shall ensure that any such affiliates or third-party providers are subject to data protection obligations no less protective than those set out in this Agreement and required by applicable Data Protection Laws.

30.8. SYNAQ shall be entitled to retain Personal Data of the Reseller and Client if required by law, regulation, or government or regulatory body, and for audit purposes. Otherwise, SYNAQ shall, at the choice of the Client or Reseller, delete or return all Personal Data after the end of the provision of services relating to processing, and delete existing copies unless retention is required by law.

30.8.1. Processing of Personal Data during provisioning of the Services will be done in accordance with the SYNAQ Privacy Policy available on its website ([www.SYNAQ.com/legal/](http://www.SYNAQ.com/legal/)). It is the Reseller's obligation to ensure that the conditions under the **SYNAQ Privacy Policy** are made available to Clients where Clients' have signed up for the SYNAQ Services under the Reseller Client Agreement.

30.8.2. It is the Client's or, where Reseller acts on behalf of the Client, the Reseller's responsibility to ensure that it is entitled to transfer Personal Data to SYNAQ and to enable SYNAQ to lawfully Process the Personal Data in accordance with the Reseller Client Agreement on the Client/End User's behalf. The Reseller and Client warrant that all data subjects have been provided with all necessary information regarding the processing of their Personal Data, and where required, have given their consent.

30.9. SYNAQ shall:

30.9.1. have due regard to generally accepted information security practices and processes which may apply to it and shall implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, as appropriate, pseudonymisation and encryption of Personal Data, the ability to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services, and the ability to restore the availability and access to Personal Data promptly in the event of a physical or technical incident;

30.9.2. Ensure that the Processed Personal Data shall be kept strictly separate from other third-party data.



30.9.3. notify the Reseller and Client (where required by law) immediately in writing if there are reasonable grounds to believe that the Personal Data has been accessed or acquired by any unauthorised person or that there has been any loss or corruption of Personal Data. SYNAQ agrees to use its best endeavours to assist the Reseller and/or End User, where such information has been used, lost, corrupted, or disclosed in remedying such unauthorised use, loss, corruption, or disclosure. SYNAQ shall provide all information reasonably requested by the Reseller or Client to enable them to comply with their obligations under applicable Data Protection Laws, including breach notification requirements.

30.9.4. Where the Client is under current Data Protection Laws obligated to provide a person with information about the processing of their Personal Data, SYNAQ shall, upon the written request of the Client (or Reseller, where Reseller acts on behalf of the Client), assist him/her in the task of providing such information in accordance with the Data Protection Laws.

30.10. Where the Reseller or any of its sub-contractors, as part of the fulfilment of its obligations under this Agreement, processes Personal Data as a Processor on behalf of the Client acting as a Controller:

30.10.1. The Reseller shall, and shall procure that its sub-contractors shall:

30.10.1.1. act only on instructions from the Client when processing Personal Data provided to it under this agreement and keep records of all such processing.

30.10.1.2. comply with the Client's instructions in relation to the processing of Personal Data as such instructions are given and varied from time to time by the Supplier.

30.10.1.3. at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

30.10.1.4. not transfer any Personal Data outside the Territory without the Client's prior written consent; and

30.10.1.5. immediately notify the Client if it receives any complaint, notice, or communication which relates directly or indirectly to the processing of Personal Data under this agreement and provide full co-operation and assistance in relation to any such complaint, notice, or communication.

30.11. SYNAQ may, from time to time, serve on the Reseller an information notice requiring the Reseller, within such time and in such form as is specified in the information notice, to give to SYNAQ such information as SYNAQ may reasonably require relating to:

30.11.1. compliance by the Reseller or by its sub-contractors with the Reseller's obligations to SYNAQ under this Agreement in connection with the processing of Personal Data; and

30.11.2. The rights of data subjects, including but not limited to subject access rights.

30.12. The Reseller shall provide to SYNAQ on request a copy of all Personal Data held by it pursuant to this agreement, in the format and on the media reasonably specified by SYNAQ, and shall promptly inform SYNAQ if any such data is lost or destroyed or becomes damaged, corrupted, or unusable. The Reseller will restore such data at its own expense.

30.13. Each party agrees to obtain all necessary consents under the Data Protection Laws before the Processing of Personal Data (where required). Each party shall maintain a record of such consents, where applicable, and shall promptly notify the other party of any withdrawal or restriction of consent by a data subject.

30.14. The Reseller may use, store, or otherwise process Personal Data provided by SYNAQ for relationship management purposes, but shall not pass any Personal Data to any third parties, not authorised by SYNAQ in writing, without prior notification to the data subject. The Reseller shall ensure that any such authorised third parties are subject to data protection obligations no less protective than those set out in this Agreement and required by applicable Data Protection Laws.

30.15. The Parties reserve the right to intercept, block, filter, copy, read, use, retain, and/or monitor all communications initiated and received between the Parties.

**31. DISPUTE RESOLUTION.** Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures -

31.1. Informal dispute resolution: Before referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring a dispute to their senior management. Senior management of all Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 7 (seven) days of the dispute having been referred.

31.2. Informal dispute resolution does not reduce the Parties' rights: Proceedings in terms of the clause 0 shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.

31.3. Institution of Formal Proceedings: Subject to the provisions of clauses 0 and 0. The Parties agree that either Party may elect to refer any dispute which may arise to either the High Court of South Africa or to arbitration proceedings as contemplated in clause 0. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the dispute in question.

31.4. Arbitration: If the Parties are unable to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute in terms of clause 0, then such dispute shall, on written demand by the electing Party, be submitted to arbitration at the Arbitration Foundation of Southern

Africa ("AFSA") to be held in Cape Town. The parties can agree on the arbitrator to be appointed; where no agreement can be reached between the parties, the chairperson of AFSA will make such an appointment.

31.5. Status of arbitration ruling: The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel. A decision, which becomes final and binding in terms of this clause 0 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

31.6. Rapid resolution of disputes: The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.

31.7. Excluded relief: This clause 0 shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

31.8. Agreed Jurisdiction: The Parties hereby consent to the jurisdiction of the Western Cape High Court (Cape Town) in respect of proceedings referred to in clause 31.

## 32. FORCE MAJEURE

32.1. Neither Party shall be liable for default or delay in fulfilling its obligations under this Agreement if such delay is due to circumstances beyond its reasonable control, including acts of God, war, civil disturbances, court orders, power failures, communication issues, or malicious computer programs ("**Circumstances of Force Majeure**"). Liability is contingent upon the non-performing Party being without fault and unable to prevent the delay through alternative means.

32.2. In the event of Circumstances of Force Majeure, the non-performing Party must:

32.2.1. Notify the other Party in writing as soon as reasonably possible.

32.2.2. Be excused from performance for the duration of the circumstances while making best efforts to resume obligations promptly.

32.2.3. Cooperate with the other Party in implementing reasonable contingency measures.

32.2.3. If Circumstances of Force Majeure persist for more than 30 days, either Party may terminate this Agreement with written notice.

32.2.4. Neither Party will be liable to the other for any default or delay in the performance of its obligations under this Agreement:

## 33. NOTICES

32.1. Each Party chooses as its address for all purposes under this Agreement ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement ("notice"), the addresses and contact details as per the cover page.

32.2. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.

32.3. Any notice to either party which is -

32.3.1. sent by prepaid registered post in a correctly addressed envelope to the address specified for it under the clause 0 shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or

32.3.2. delivered to the party by hand, shall be deemed to have been received on the day of delivery, if it has been delivered to a responsible person during ordinary business hours; or

32.3.3. Sent by data messages from one party to another shall be deemed to be received by the receiving party when the data message enters the recipient's information system, unless otherwise proven.

33.4. Notwithstanding anything to the contrary contained in this clause, a written notice or other communication received by either party and for which written receipt has been obtained shall be adequate written notice or communication to it, notwithstanding that the notice was not sent to or delivered at its chosen address.

33.5. Any notice required or permitted under this Agreement shall be valid and effective only if in writing.

#### **34. ASSIGNMENT.**

34.1. The Reseller may not transfer or assign this Agreement, in whole or in part, or delegate any of its duties hereunder, to a third party by change in control, operation of law, or otherwise, without the prior written consent of SYNAQ, which shall not be unreasonably withheld.

34.2. SYNAQ may assign this Agreement and/or any purchase order in whole or in part at its sole discretion without the consent of the Reseller. The Reseller may not transfer, assign, or otherwise dispose of this Agreement, in whole or in part, without the prior written consent of SYNAQ.

34.3. No assignment shall be effective unless (i) the assignor notifies the other party of the assignment in writing and (ii) the assignee agrees in writing to abide by the terms of this Agreement.

34.4. Any assignment in violation of the foregoing shall be void.

34.5. This Agreement shall inure to the benefit of the parties, their successors, and permitted assigns. The Reseller understands and agrees that, regardless of any such assignment, the rights and obligations of SYNAQ in this Agreement may accrue to, or be fulfilled by, any affiliate and/or its subcontractors.

### **35. GENERAL AND MISCELLANEOUS**

35.1. Sole record of agreement: This Agreement constitutes the sole record of the agreement between the Parties about the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise, or the like not recorded herein. This Agreement supersedes all previous agreements between the parties, save for where the Reseller has agreed to any restraint or confidentiality undertaking other than stipulated in this Agreement.

35.2. No amendments except in writing: No alteration, cancellation, variation of, or addition hereto, including this clause, shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.

35.3. Waivers: No relaxation or indulgence, which any Party may grant to any other, shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in the future.

35.4. Survival of obligations: Any provision of this Agreement, which contemplates performance or observance after any termination, or expiration of this Agreement, shall survive any termination or expiration of this Agreement and continue in full force and effect.

35.5. Approvals and consents: An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

35.6. Severability: In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

35.7. Governing Law: The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.

35.8. Counterparts: This Agreement may consist of several counterparts and, if so, the counterparts taken together constitute the same instrument.

**SYNAQ (PTY) LIMITED****RESELLER**

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Authorised Signature

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Authorised Signature

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Print Name and Title

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Print Name and Title

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Date signed

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Date signed

**ANNEXURE A**
**SCHEDULE OF PARTICULARS**
**Particulars of Reseller**

<b>Name</b>	[ADD NAME]
<b>Registration Number / ID Number</b>	[ADD REGISTRATION NR.]
<b>Business Address: Domicilium</b>	[ADD ADDRESS]
<b>Postal Address</b>	
<b>Tel. nr.</b>	
<b>Email address:</b>	<a href="#">[ADD EMAIL]</a>

**Representative (where the Reseller is a juristic person)**

<b>Name</b>	
<b>Registration Number</b>	
<b>Business Address: Domicilium</b>	
<b>Postal Address</b>	
<b>Tel. nr.</b>	
<b>Email address:</b>	

**AGREEMENT DETAILS**

<b>Commencement Date</b>	[ADD DATE]
<b>Initial term</b>	24 months
<b>Commission and Discounts:</b>	<b>Click here to view Reseller Tier Groups:</b> <b>Click here to view the Payment Terms:</b> <b>Click here to view Products and Services:</b>
<b>Territory</b>	[ADD DETAILS]

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